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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
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11 RICHARD S. KINDRED, ) Case No. SACV 14-0469-ABC (RNB)  
12 Petitioner, )  
13 vs. ) ORDER TO SHOW CAUSE  
14 CA SUPERIOR COURT, )  
15 COUNTY OF ORANGE, )  
16 Respondent. )

17 Petitioner currently is incarcerated at Coalinga State Hospital, following a trial  
18 in Orange County Superior Court on a petition for commitment as a sexually violent  
19 predator (“SVP”) under California’s Sexually Violent Predator Act (Cal. Welf. &  
20 Inst. Code §§ 6600 et seq.). On March 27, 2014, he filed a Petition Under 28 U.S.C.  
21 § 2241 for Writ of Habeas Corpus by a Person in State Custody herein that purports  
22 to contain two grounds for relief.

23 In order to be entitled to habeas relief under 28 U.S.C. § 2241, a state prisoner  
24 must be in custody in violation of the Constitution or laws or treaties of the United  
25 States. Here, Ground one of the Petition is not framed as a federal constitutional  
26 claim. Moreover, even if Ground one were reframed as a federal constitutional claim,  
27 the Court would not be able to consider it on habeas review because petitioner’s claim  
28 regarding the failure to provide sex offender treatment concerns conditions of

1 confinement to which petitioner allegedly has been subjected while confined at  
2 Coalinga State Hospital. “[T]he writ of habeas corpus is limited to attacks upon the  
3 legality or duration of confinement.” Crawford v. Bell, 599 F.2d 890, 891 (9th Cir.  
4 1979).

5 In Ground two of the Petition, petitioner appears to be claiming that the  
6 California Department of State Hospitals/ Coalinga State Hospital provided false  
7 information to the Superior Court and the District Attorney regarding petitioner’s  
8 current mental status. Even if this ground for relief were construed as implicating the  
9 validity of the judgment of commitment following the trial on the SVP petition, like  
10 Ground one, it is not framed as a federal constitutional claim. Moreover, even if  
11 Ground two were reframed as a federal constitutional claim, it appears to the Court  
12 that abstention from consideration of it would be appropriate because, according to  
13 the Petition, petitioner’s appeal from the judgment of commitment still is pending.

14 “[O]nly in the most unusual circumstances is a defendant entitled to have  
15 federal interposition by way of injunction or habeas corpus until after the jury comes  
16 in, judgment has been appealed from and the case concluded in the state courts.”  
17 Drury v. Cox, 457 F.2d 764, 764-65 (9th Cir. 1972); see also Carden v. Montana, 626  
18 F.2d 82, 83-84 (9th Cir.), cert. denied, 449 U.S. 1014 (1980). Thus, as a general  
19 proposition, a federal court will not intervene in a pending state criminal proceeding  
20 absent extraordinary circumstances where the danger of irreparable harm is both great  
21 and immediate. See Younger v. Harris, 401 U.S. 37, 45-46, 91 S. Ct. 746, 27 L. Ed.  
22 2d 669 (1971); see also Fort Belknap Indian Community v. Mazurek, 43 F.3d 428,  
23 431 (9th Cir. 1994) (abstention appropriate if ongoing state judicial proceedings  
24 implicate important state interests and offer adequate opportunity to litigate federal  
25 constitutional issues), cert. denied, 516 U.S. 806 (1995). Moreover, the law is well  
26 established that the doctrine also applies to pending state civil proceedings, when  
27 important state interests are at stake. See, e.g., Moore v. Sims, 442 U.S. 415, 423, 99  
28 S. Ct. 2371, 60 L. Ed. 2d 994 (1979) (pending child custody proceeding); Huffman

1 v. Pursue, Ltd., 420 U.S. 592, 604, 95 S. Ct. 1200, 43 L. Ed. 2d 482 (1975) (pending  
2 nuisance action).

3 Younger abstention is appropriate in favor of a state proceeding if three criteria  
4 are met: (1) the state proceedings are ongoing; (2) the proceedings implicate  
5 important state interests; and (3) the state proceedings provide an adequate  
6 opportunity to litigate the plaintiff's federal constitutional claims. See Middlesex  
7 County Ethics Comm. v. Garden State Bar Ass'n, 457 U.S. 423, 432, 102 S. Ct. 2515,  
8 73 L. Ed. 2d 116 (1982); Kenneally v. Lungren, 967 F.2d 329, 331-32 (9th Cir. 1992),  
9 cert. denied, 506 U.S. 1054 (1993); Partington v. Gedan, 880 F.2d 116, 121 (9th Cir.  
10 1989), cert. denied, 497 U.S. 1038 (1990).

11 Here, it appears to the Court that all three criteria for Younger abstention are  
12 met. First, petitioner's SVP proceeding is ongoing in that the appeal from the  
13 judgment of commitment still is pending. Second, the ongoing SVP proceeding does  
14 implicate important state interests. In enacting California's Sexually Violent Predator  
15 Act, the California Legislature indicated that the state had an interest in identifying  
16 sexually violent predators with diagnosable mental disorders while they were  
17 incarcerated as these persons were not safe to be at large and if released represented  
18 a danger to the health and safety of others in that they were likely to engage in acts  
19 of sexual violence. See Historical and Statutory Comments to Cal. Welf. & Inst.  
20 Code § 6600. As the California Supreme Court observed in Hubbart v. Superior  
21 Court, 19 Cal. 4th 1138, 1153 n.20, 81 Cal. Rptr. 2d 492, 969 P.2d 584 (1999), "The  
22 problem targeted by the act is acute, and the state interests--protection of the public  
23 and mental health treatment--are compelling."

24 In considering the third factor, the Supreme Court has noted that "where vital  
25 state interests are involved, a federal court should abstain 'unless state law clearly  
26 bars the interposition of the constitutional claims.'" Middlesex, 457 U.S. at 432.  
27 "[T]he ... pertinent inquiry is whether the state proceedings afford an adequate  
28 opportunity to raise the constitutional claims ...." Id. (quoting Moore, 442 U.S. at

430). Here, even assuming that Ground two of the Petition could be reframed as a federal constitutional claim, the Court fails to see why such a federal constitutional claim could not be adequately addressed in either petitioner's appeal from the judgment of commitment or a habeas petition to the state courts. See, e.g., In re Smith, 42 Cal. 4th 1251, 73 Cal. Rptr. 3d 469, 178 P.3d 446 (2008) (petitioner raising equal protection claim challenging continuation of SVP proceedings, when the felony conviction that was the basis of his custody at the time the SVP proceedings were commenced was reversed on appeal); People v. Taylor, 174 Cal. App. 4th 920, 94 Cal. Rptr. 3d 756 (2009) (appellant raising due process, equal protection, double jeopardy, and ex post facto claims); People v. Hubbard, 88 Cal. App. 4th 1202, 106 Cal. Rptr. 2d 490 (2001) (appellant claiming inter alia a due process violation on the basis that he was not in lawful custody at the time the SVP commitment petition was filed); People v. Buffington, 74 Cal. App. 4th 1149, 88 Cal. Rptr. 2d 696 (1999) (appellant raising ex post facto, double jeopardy, due process and equal protection claims).

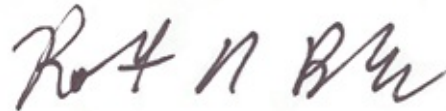
The Court also notes that other federal courts similarly have concluded that Younger abstention applies to SVP proceedings. See, e.g., Rhoden v. Mayberg, 361 Fed. Appx. 895, 896 (9th Cir. 2009) (now citable for its persuasive value pursuant to Ninth Circuit Rule 36-3) ("These state civil commitment proceedings are judicial in nature, implicate important state interests, and afford [the petitioner] an adequate opportunity to litigate his federal claims."); Miller v. Cate, 2011 WL 4457666, at \*4 (E.D. Cal. Sept. 23, 2011); Shehee v. Baca, 2009 WL 838172, at \*1-\*2 (C.D. Cal. Mar. 30, 2009); Clemons v. Kramer, 2008 WL 3833416, at \*3-\*5 (C.D. Cal. Aug. 15, 2008); Dannenberg v. Nakahara, 1998 WL 661467, at \*2 (N.D. Cal. Sept. 22, 1998).

Nor would it make any difference if petitioner had framed Ground two as a federal constitutional claim and included it in his California Supreme Court habeas petition. See Drury, 457 F.2d at 765 (exhaustion of federal issue insufficient if criminal proceedings through direct appeal not yet complete); Murphy v. Wilson, 409

1 F.2d 840, 841 (9th Cir. 1969) (exhaustion requirement not satisfied until the state  
2 appeal proceedings have been completed and a final state judgment has been entered).

3 Accordingly, on or before **April 28, 2014**, petitioner is ordered to show cause,  
4 in writing, why this action should not be summarily dismissed pursuant to Rule 4 of  
5 the Rules Governing Section 2254 Cases in the United States District Courts without  
6 prejudice to refiling after petitioner's SVP proceedings, **including appeal**, are  
7 completed, and petitioner has exhausted his state remedies with respect to any federal  
8 constitutional claims.

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10 DATED: March 31, 2014

A handwritten signature in dark ink, appearing to read "R. N. Block", is written over a light gray rectangular background.

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13 **ROBERT N. BLOCK**  
14 **UNITED STATES MAGISTRATE JUDGE**  
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